

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY JUNE 10, 2016

SENATE BILL

No. 133

Introduced by Senator McGuire

January 22, 2015

An act to add Chapter 1.1 (commencing with Section 7283.60) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to hosting platforms.

LEGISLATIVE COUNSEL'S DIGEST

SB 133, as amended, McGuire. Transient occupancy taxes: hosting platforms: collection.

Existing law authorizes a city, county, or city and county to impose taxes within its jurisdiction, as provided, including a transient occupancy tax.

This bill would authorize a city, county, or city and county to elect to allow platforms, as defined, that elect to assume the responsibility of collecting and remitting transient occupancy taxes on behalf of operators, to collect and remit those taxes to that city, county, or city and county, as specified. For cities, counties, and cities and counties that notify the Controller of their election by April 30, 2017, and for platforms that notify the Controller of their election by March 1, 2017, this collection and remittance would begin on July 1, 2017. For platforms and cities, counties, or cities and counties that provide notifications to the Controller after those dates, the collection and remittance would begin at least 6 months after notification, as specified. The bill would authorize a city, county, or city and county to discontinue an election and would make this discontinuance effective at least 6 months after notification to the Controller. The bill would also authorize

a platform to discontinue its election, entirely or in part, effective as specified.

This bill, by December 31, 2018, and by December 31 of each year thereafter, would require the Controller to review or audit a platform's collection and remittance of tax revenue pursuant to the above-described provisions, would further require the Controller to submit a final report containing specific information to each city, county, or city and county in which the platform collected and remitted taxes, and would authorize the platform or the city, county, or city and county to appeal findings identified in the report, *as provided*.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.1 (commencing with Section 7283.60)
2 is added to Part 1.7 of Division 2 of the Revenue and Taxation
3 Code, to read:

4
5 CHAPTER 1.1. VOLUNTARY OCCUPANCY TAX COLLECTION
6

7 7283.60. For purposes of this chapter, the following terms have
8 the following meanings:

9 (a) "Participating platform" means a platform that assumes the
10 responsibility for collecting and remitting to a city, county, or city
11 and county on behalf of an operator in a participating jurisdiction
12 pursuant to this chapter, the amount of transient occupancy tax on
13 a rental transaction that is facilitated by the platform for a unit that
14 is offered for occupancy for tourist or transient use for
15 compensation to the operator within a participating jurisdiction.

16 (b) "Participating jurisdiction" means a city, county, or city and
17 county that has adopted a resolution that permits a participating
18 platform to collect and remit all transient occupancy tax on rental
19 transactions that are facilitated by the platform for any unit that is

1 offered for occupancy for tourist or transient use for compensation
2 to an operator within its jurisdiction and has notified the Controller
3 pursuant to subdivision (b) of Section 7283.63, and in which a
4 participating platform is collecting and remitting transient
5 occupancy tax on rental transactions that are facilitated by the
6 platform for any unit that is offered for occupancy for tourist or
7 transient use for compensation to an operator within its jurisdiction.

8 (c) “Operator” means a person offering, through a platform, to
9 make a unit available for tourist or transient use.

10 (d) “Personally identifiable information” means operator
11 information and identifiable transaction-level records. “Operator
12 information” means a taxpayer’s or operator’s identifying
13 information, including without limitation, the taxpayer’s or
14 operator’s name, the taxpayer’s or operator’s address, and the
15 property address of any unit made available by an operator or
16 occupied by a taxpayer through a participating platform.
17 “Identifiable transaction-level records” means ~~records of individual~~
18 ~~rental transactions that, when taken together with other information~~
19 ~~that is publicly accessible, would be reasonably likely, as~~
20 ~~determined by the Controller, to reveal the identity or business~~
21 ~~records of an individual operator or taxpayer. There shall be a~~
22 ~~presumption that individual transaction records in a participating~~
23 ~~jurisdiction with fewer than 500 monthly transactions qualify as~~
24 ~~identifiable transaction-level records; any information that reveals~~
25 ~~the amount of rent collected or the amount of transient occupancy~~
26 ~~tax collected with respect to any individual transaction or any~~
27 ~~individual operator.~~

28 (e) “Platform” means a marketplace that is created for the
29 primary purpose of facilitating the rental of a unit offered for
30 occupancy for tourist or transient use for compensation to the
31 operator of that unit, and the owner of the marketplace derives
32 revenues, including booking fees or advertising revenues, from
33 providing or maintaining that marketplace. “Facilitating” includes,
34 but is not limited to, the act of allowing the operator of the unit to
35 offer or advertise the unit on the Internet Web site provided or
36 maintained by the owner of the platform.

37 (f) “Transient occupancy tax” means a tax on the privilege of
38 occupying a room or rooms, or other living space, in a hotel, inn,
39 tourist home or house, motel, or other lodging unless the occupancy
40 is for a period of more than 30 days.

1 7283.61. On and after July 1, 2017, every participating platform
2 shall collect on behalf of an operator the amount of any transient
3 occupancy tax on every rental transaction that is facilitated by the
4 participating platform for a unit that is offered for occupancy for
5 tourist or transient use for compensation to the operator and is
6 located within a participating jurisdiction. The participating
7 platform shall remit the amount to the participating jurisdiction
8 pursuant to applicable requirements of local ordinances governing
9 the remission, but not the reporting, of the tax.

10 7283.62. On or before March 1, 2017, the Controller shall
11 develop and publicly notice both of the following:

12 (a) Procedures that a platform shall use to notify the Controller
13 if the platform elects to, or discontinues its election to, become a
14 participating platform.

15 (b) Procedures that a city, county, or city and county shall use
16 to notify the Controller if the city, county, or city and county elects
17 to, or discontinues its election to, become a participating
18 jurisdiction.

19 7283.63. (a) On or before March 1, 2017, a platform may elect
20 to become a participating platform by using the procedures
21 developed pursuant to subdivision (a) of Section 7283.62 to notify
22 the Controller of the platform's election.

23 (b) On or before April 30, 2017, a city, county, or city and
24 county may elect by resolution to become a participating
25 jurisdiction by using the procedures developed pursuant to
26 subdivision (b) of Section 7283.62 to notify the Controller of the
27 city's, county's, or city and county's election.

28 (c) An election made pursuant to this section is effective upon
29 receipt by the Controller and until discontinued by the platform
30 or city, county, or city and county pursuant to Section 7283.65,
31 except that a city, county, or city and county's election pursuant
32 to this section shall not be effective as to a participating platform
33 that, on or before June 15, 2017, notifies the Controller that the
34 participating platform will not collect and remit transient occupancy
35 tax in the city, county, or city and county.

36 (d) The Controller shall publicly identify, by posting on the
37 Controller's Internet Web site, each platform and each city, county,
38 or city and county that has provided a notification to the Controller
39 pursuant to this section as soon as possible upon receipt, but in no
40 event later than May 31, 2017.

1 7283.64. On or after July 1, 2017, a platform that did not elect
2 to become a participating platform pursuant to Section 7283.63 or
3 had previously elected to discontinue its status as a participating
4 platform may elect or reelect to become a participating platform
5 by using the procedures developed pursuant to subdivision (a) of
6 Section 7283.62 to notify the Controller of the platform's election.
7 An election made pursuant to this section is effective six months
8 after receipt by the Controller or the date specified in the notice,
9 whichever is later, and until discontinued by the platform pursuant
10 to Section 7283.65. The Controller shall publicly identify, by
11 posting on the Controller's Internet Web site, each platform that
12 has provided a notification to the Controller pursuant to this section
13 as soon as possible upon receipt.

14 7283.65. (a) A participating platform may elect to discontinue
15 its status as a participating platform by using the procedures
16 developed pursuant to subdivision (a) of Section 7283.62 to notify
17 the Controller of the participating platform's election. An election
18 made pursuant to this subdivision is effective on the first day of
19 the month that is six months after the date of the election. A
20 participating platform may notify the Controller that the
21 participating platform will discontinue collecting and remitting
22 transient occupancy tax in any participating jurisdiction that
23 amends or otherwise alters the ordinance, rules, or provisions
24 applicable to transient occupancy tax in the participating
25 jurisdiction upon the effective date of the amendments or
26 alterations.

27 (b) On or before June 30, 2018, or June 30 of any year thereafter,
28 a participating jurisdiction may elect to discontinue its status as a
29 participating jurisdiction, or a city, county, or city and county may
30 elect to become a participating jurisdiction, by using the procedures
31 developed pursuant to subdivision (b) of Section 7283.62 to notify
32 the Controller of the participating jurisdiction's or city's, county's,
33 or city and county's election. An election made by June 30 of any
34 year pursuant to this subdivision is effective on January 1 of the
35 following year after the election, except that a city, county, or city
36 and county's election pursuant to this subdivision shall not be
37 effective as to a participating platform that, on or before November
38 15 of the year in which the election is made, notifies the Controller
39 that the participating platform will not collect and remit transient
40 occupancy tax in the city, county, or city and county.

(c) The Controller shall publicly identify, by posting on the Controller's Internet Web site, each platform and each city, county, or city and county that has provided a notification to the Controller pursuant to this section as soon as possible upon receipt.

7283.66. (a) By December 31, 2018, and by December 31 of each year thereafter, the Controller shall review or audit a participating platform's collection and remittance of tax revenue pursuant to Section 7283.61 and shall submit a final report to each participating jurisdiction in which the participating platform collected and remitted taxes. The final report shall not disclose any personally identifiable information and shall contain only the following information:

(1) A general description of the Controller's review or audit findings.

(2) The aggregate amount of taxes collected and remitted to each participating jurisdiction by each participating platform during the period covered by the report.

(3) An identification of any errors in the collection and remittance of tax revenues within the participating jurisdiction that were determined as a result of any review or audit in the participating jurisdiction that were not remediated, including by payment of all amounts owing, within 90 days.

(4) The participating platform's response, if any, to errors identified by any audit or review in the participating jurisdiction that were not remediated, including by payment of all amounts owing, within 90 days.

(b) (1) The Controller shall only request the participating platform to submit personally identifiable information as reasonably necessary to (i) verify a participating platform's proper application of geographic boundaries and (ii) verify proper collection and remittance of transient occupancy tax, and shall not disclose to a participating jurisdiction, publicly disclose, or otherwise make known in any manner whatsoever any personally identifiable information obtained from a participating platform or other person in the course of conducting an audit or review required by this section.

(2) When requested by a participating jurisdiction, the Controller shall permit any duly authorized officer or employee of that participating jurisdiction to examine the records of the Controller, excluding any personally identifiable information, pertaining to

1 any audit or review of collections by a participating platform within
2 that participating jurisdiction. Except as otherwise provided herein,
3 this paragraph shall not be construed to allow any officer or
4 employee of that participating jurisdiction to request or examine
5 any records other than records in the Controller's possession that
6 were obtained in the course of its review or audit of transient
7 occupancy taxes collected by a participating platform within that
8 participating jurisdiction.

9 (c) A platform or a participating jurisdiction may appeal any
10 findings identified in a review or audit report submitted pursuant
11 to subdivision (a) by providing a notice of appeal to the
12 Controller's General Counsel. The notice of appeal shall be filed
13 within 60 days from the date of the final review or audit report
14 and shall identify the issues being appealed and the basis and
15 reason for the appeal. The Controller's General Counsel shall
16 review the issues appealed and may hold an informal appeal
17 conference for purposes of taking additional information and shall
18 issue a determination within 90 days of receipt of the appeal.

19 (d) The Controller may recover the reasonable costs, measured
20 by the Controller's standard rate, of an audit or review conducted
21 pursuant to subdivision (a) or an appeal conducted pursuant to
22 subdivision (c) from the participating platform that was audited
23 or reviewed.

24 (e) This section shall not apply to cities, counties, or cities and
25 counties that are not participating jurisdictions.

26 7283.67. This chapter does not limit the existing authority of
27 a city, county, or city and county to regulate operators, including
28 any local regulation that requires operators to provide information
29 concerning transactions conducted in the city, county, or city and
30 county, provided that the requirements do not discriminate against
31 transactions facilitated through a platform.

32 7283.68. A participating platform's collection and remittance
33 of transient occupancy tax pursuant to this chapter shall be subject
34 to audit or review only by the Controller, pursuant to the
35 requirements of Section 7283.66. A participating platform shall
36 not be required to comply with audit or review requirements or
37 requests regarding the participating platform's collection and
38 remittance of transient occupancy tax pursuant to this chapter in
39 any participating jurisdiction, or to related requests or requirements

1 for personally identifiable information, by any participating
2 jurisdiction.

3 7283.69. A participating platform that complies with audit or
4 review parameters established by the Controller pursuant to Section
5 7283.66 shall not be required to provide personally identifiable
6 information to ~~any city, county, or city and county, including~~ a
7 participating jurisdiction, except pursuant to an order by a court
8 of competent jurisdiction.

9 7283.70. This chapter shall not be construed as creating any
10 legal duty or requirement for a participating platform to collect or
11 remit transient occupancy taxes in a city, county, or city and county
12 that is not a participating jurisdiction.

13 SEC. 2. The Legislature finds and declares that Section 1 of
14 this act, which adds Section 7283.66 to the Revenue and Taxation
15 Code, imposes a limitation on the public's right of access to the
16 meetings of public bodies or the writings of public officials and
17 agencies within the meaning of Section 3 of Article I of the
18 California Constitution. Pursuant to that constitutional provision,
19 the Legislature makes the following findings to demonstrate the
20 interest protected by this limitation and the need for protecting
21 that interest:

22 People who rent units for tourist or transient use through
23 platforms have a reasonable expectation of privacy, as against
24 public disclosure, in their rental of those units and in the personally
25 identifiable information they provide to platforms in connection
26 with those rentals. Limiting the disclosure of that personally
27 identifiable information in any records obtained or generated by
28 the Controller pertaining to audits or reviews of a platform's
29 collection and remittance of transient occupancy taxes furthers the
30 purposes of Section 3 of Article I of the California Constitution
31 by appropriately balancing the interest in public disclosure with
32 the interest in preserving the privacy and confidentiality of that
33 personally identifiable information.